



United States Mission to the OSCE

Statement on Freedom and Security: Outreach and Prevention of Discrimination

As prepared for delivery by Timothy Keefer,
U.S. Department of Homeland Security, Office for Civil Rights
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Thank you for the opportunity to speak at this Supplementary Human Dimension Meeting on "Human Rights and the Fight Against Terrorism." The U.S. Department of Homeland Security's Office for Civil Rights and Civil Liberties, headed by Daniel W. Sutherland, provides proactive legal and policy advice to the senior leadership of the Department on a wide range of issues, seeking to help them to shape policy in ways that are mindful of our civil rights and civil liberties. The Department has been in existence for just over two years and is a place of firsts in many respects. One such first is the establishment of this team of attorneys who specialize in civil liberties issues and report directly to the Secretary. It is notable that an agency that has a largely law enforcement and military mission has a civil libertarian in the senior leadership. This has helped the Department:

- improve the operation of watch lists;
- improve training for our law enforcement officers;
- help people with disabilities to be better prepared for emergencies;
- investigate and resolve civil rights and civil liberties complaints from citizens about Department policies and actions;
- significantly increase the employment of people with disabilities into our agency; and,
- help improve our nation's immigration policies.

We believe that people should be viewed as individuals, based on the content of their character, on what they do, not on their race or ethnicity or religious beliefs. We are convinced that we cannot do an effective job in homeland security without actively, fully connecting with the Muslim-American and Arab-American communities here in our country. We need these communities to be part of our team. The Muslim-American and Arab-American communities have been part of the fabric of the country for decades, in industry, in academia, in the military service, in government service, in the medical profession, and in our neighborhoods. Like all Americans, Muslim-Americans and Arab-Americans suffered on September 11, 2001. The tendency to condemn all members of any particular ethnic or religious group for the actions of some is contrary to our founding principles, wrongheaded, and worse yet, counterproductive. If we isolate whole categories of people, we will be violating this fundamental national value. In addition, this is also an important threat to national security, because an important element of our nation's strategy must be to build

bridges with the Arab-American and Muslim-American communities, and with the Arab-American and Muslim-American world. If we cement solid relationships with the Muslim-American and Arab-American communities here in America, as well as with other ethnic and religious communities, we will be aligning ourselves with some of our best allies in this battle of ideas. We have the common goal of protecting the civil rights and civil liberties of all of our people; this is a fundamental element of our government.

The question now is this: How can our government better engage with Muslim-American and Arab-American communities?

First, we need to work together to ensure that our civil rights laws are fully enforced. Religious liberty is a fundamental American value and the Justice Department regularly prosecutes lawsuits to the religious rights and freedoms of all Americans. It has filed suit on several prominent religious expression cases, seeking to defend the rights of religious minorities to live their faith.

- Federal law enforcement has worked hard on behalf of those who are, or are perceived to be, Muslim, or of Arab or Middle Eastern South Asian origin. To date, the Department of Justice has investigated over 630 incidents since 9/11 involving violence or threats against individuals from these backgrounds.
- The Justice Department intervened in the case of a Muslim-American schoolgirl who was suspended for wearing a Muslim headscarf, or Hijab. Although she had worn the scarf without objection for several weeks, on September 11, 2003, she was informed that doing so violated the school district's dress code, which prohibited all headwear. The Justice Department resolved the matter with a consent decree, which will allow the student to wear the headscarf, and which requires the school district to make reasonable exceptions for *bona fide* religious obligations.
- The Justice Department recently sued the New York Metropolitan Transit Authority, alleging that it has engaged in a pattern or practice of discrimination in employment on the basis of religion by: (1) selectively enforcing its uniform policies regarding head coverings toward Muslim-American and Sikh-American bus and train operators; and (2) failing or refusing to reasonably accommodate the religious beliefs and practices of Muslim-American and Sikh-American bus and train operators.

As part of its statutory responsibility, the DHS Office for Civil Rights and Civil Liberties has resolved a number of complaints that individuals and organizations have brought to us. For example, we reviewed allegations concerning a young Muslim-American man from an African country who came to the United States seeking asylum. As a result of our review, we recommended to border and transportation security officials that they consider strengthening asylum policies in several ways, including the health and medical services provided to detainees, the length of time in detention prior to a hearing in court, and the process for determining the age of asylum applicants. Border and transportation security officials have agreed with many of our recommendations, and we are working with them to make these changes in asylum policies.

As a result of several complaints that the American-Arab Anti-Discrimination Committee (ADC) has brought to us, we have worked with transportation security officials to improve the operation of aviation watch lists. For example, ADC brought us complaints about young children who experienced difficulties in flying apparently because, as one airline told the family, these children appeared on a “security list.” During the course of our investigation of these matters, we worked closely with transportation security officials. We concluded that in both cases the airlines had not properly followed our security directives with regard to these lists. Transportation security officials have since made improvements in the operation of the aviation watch lists that help to minimize the times that airlines make errors in misidentifications. This led to ADC’s April 27 press release titled, “TSA Improves No Fly List Procedures.”

Secondly, the key, of course, is to take proactive steps to try to prevent civil rights problems from happening in the first place. Our workforce needs to better understand the cultures, values, customs and traditions of Muslim-Americans, Arab-Americans, and other ethnic and religious communities in America. Dr. Margaret Nydell of Georgetown University states, “Perceptions become realities to the people who hold them, and people who lack cross-cultural experience can easily misunderstand the attitudes and behaviors they confront.” We must work hard to ensure that these misperceptions and misunderstandings are addressed. Important steps have been taken in this area:

- On February 27, 2001, in his first State of the Union address, President Bush stated that racial profiling “is wrong and we will end it in America.”
- On June 16, 2003, the Department of Justice (DOJ) issued the guidance President Bush had called for – *Guidance Regarding the Use of Race By Federal Law Enforcement Agencies*. The Guidance is important because for the first time the concept of “racial profiling” is defined with rigor; practical instructions are given about how law enforcement officers can avoid engaging in it; and, the applicability of this concept in the national security context is explained.
- Former Secretary Ridge immediately established a Department-wide working group to study how to most effectively implement the new Guidance. The Office for Civil Rights and Civil Liberties co-chaired that working group.
- On June 3, 2004, former Secretary Ridge issued a memorandum laying out the Department’s position with regard to racial profiling. The statement strongly condemns racial profiling. Moreover, it contains a one-paragraph statement of DHS policy on the issue – in a format that allows all DHS components to incorporate the policy statement easily into manuals, handbooks, and other formats.
- Our Office prepared a CD-ROM that gives our law enforcement officers a tutorial on President Bush’s policy prohibiting unlawful racial profiling. The tutorial takes about 20-25 minutes, taking the officers through a series of hypothetical fact patterns; it does not allow them to move through the tutorial without thinking because there are test questions embedded in the presentation

– wrong answer, it takes you back.

- We along with law enforcement have also engaged in a great deal of outreach to community leaders in cities like Los Angeles, Buffalo, Detroit and Washington. Together we have identified a number of issues and worked to address them before they mushroom.
- Our Office has re-packaged and sent a CD-ROM with basic law enforcement encounter information about Arab and Muslim culture to thousands of DHS employees. The CD-ROM was prepared by the Community Relations Service of the Justice Department.
- We have also worked with the Federal Law Enforcement Training Center (FLETC) to update and strengthen the training of law enforcement cadets on racial profiling. The FLETC training curriculum on this subject has been significantly expanded and strengthened.
- The Department of Homeland Security's Customs and Border Protection training office has put together an extremely effective and helpful training session on Arab and Muslim culture.
- We are listening to concerns raised by people in these communities and taking steps to improve airline screening.

Of course, our colleagues in other civil rights agencies in government are also doing great work in this area and we are making great progress in the effort to protect the civil rights of Muslim-Americans and Arab-Americans.

- Our Office participates in a regular meeting hosted by the Assistant Attorney General for Civil Rights to dialogue with leaders from Muslim-American and Arab-American advocacy groups, and all relevant government agencies are represented at this meeting.
- The Treasury Department has also encouraged and helped facilitate the creation of the National Council of American Muslim Non-Profits by the Islamic charitable community in the United States. The Council is comprised of a diverse group of representatives from the Muslim-American community who are joining forces to organize, protect and promote charitable giving against the backdrop of demonstrated terrorist abuse.
- There has been a great deal of training for federal law enforcement officers on the culture and values of the Arab-American and Muslim-American communities.

The third area in which we need to engage with each other is in the area of employment. We need to seek ways to encourage people with specialized language skills and cultural competencies to seek employment with the federal government. Engagement is a key: if people in Arab-American and Muslim-American communities are convinced that, for example, the Department of Homeland Security understands their concerns and is actively engaging with them, it is likely that more

people from these communities may seek employment with us. That means that we will have more people with critical language skills and, just as importantly, cultural competencies.

Finally, we need to place a top priority on ensuring that Muslim-Americans and Arab-Americans are given full and equal opportunity in education, in employment, in housing, and in their interactions with government agencies, and in so many other areas of public life. A University of Michigan study of the large Arab-American and Muslim-American community in Dearborn, Michigan, released in July 2004, contains some important results:

- 15% say that “since 9/11, they personally had a bad experience due to their ethnicity.” By contrast, “a third also say they received gestures of support from non-Arabs after the attacks.”
- 91% say they are proud to be American.

We believe that we have the hope of seeing levels of engagement between the government and Muslim-Americans and Arab-Americans that have never been reached before in the history of this country. For example, within the last few months, ADC and other leading Arab-American, Muslim-American, Sikh-American and other groups have met with the Secretary of Homeland Security, the Attorney General, and the Director of the FBI. We need to continue to work together to establish solid lines of communication between law enforcement and the Muslim-American and Arab-American communities. It is critical that we talk with each other – when an inflammatory incident happens, if community leaders know to call a law enforcement official the incident can be addressed or explained quickly and the tensions eased. Moreover, if a community leader grows to know and trust a law enforcement official, he or she will feel comfortable to call that official if there is something of concern happening within the community. Most of all, these open lines of communication can help improve the government’s work – if community leaders have constructive criticisms, they will have an open door to share those ideas and help us to improve. In short, we need to build a level of communication, trust, and confidence that is unprecedented in our nation’s history.